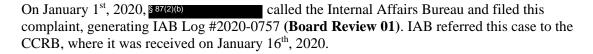
## CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	√ F	Force		Discourt.	U.S.
Julia Pagnamenta		Squad #2	202000416		Abuse		O.L.	☐ Injury
Incident Date(s)		Location of Incident:		Pr	ecinct:	18	Mo. SOL	EO SOL
Wednesday, 01/01/2020 1:15 PM		75th Precinct Stationho	ouse		75 7/1/2021 2		2/15/2022	
Date/Time CV Reported		CV Reported At:	How CV Reported:	: I	Date/Time Received at CCRB		RB	
Wed, 01/01/2020 1:21 PM		IAB	Phone	7	Thu, 01/16/2020 10:58 AM		I	
Complainant/Victim	Type	Home Addre	ss					
Subject Officer(s)	Shield	TaxID	Command					
1. POM Kerry Plawiak	18549	962017	075 PCT					
Witness Officer(s)	Shield N	o Tax No	Cmd Name					
1. SGT Douglas Ayres	01107	936160	075 PCT					
2. LT Joshua Bienvenue	00000	945511	075 PCT					
3. POM Joshua Ganshaw	08463	966072	075 PCT					
4. POM Alec Solomito	03561	964782	075 PCT					
5. LT Rajinder Singh	00000	935750	075 PCT					
Officer(s)	Allegatio	on			Inve	stiga	tor Recon	nmendation
A.POM Kerry Plawiak	Abuse: Police Officer Kerry Plawiak threatened to arrest \$87(2)(b)							
B.POM Kerry Plawiak	Force: Police Officer Kerry Plawiak used physical force against \$87(2)(b)							
C.POM Kerry Plawiak	Abuse: Police Officer Kerry Plawiak interfered with s use of a recording device.							

## **Case Summary**



At approximately 1:15 p.m., on January 1<sup>st</sup>, 2020, \$87(2)(b) went to the 75th Precinct Stationhouse in order to make a complaint against her tenants. Inside the stationhouse §87(2)(b) encountered Police Officer Kerry Plawiak of the 75th Precinct and spoke to him about ongoing issues with her tenants. Police Officer Plawiak told §87(2)(b) he could not help her with her complaint and asked her repeatedly to leave the stationhouse. § 37(2)(b) refused to leave. Police Officer Plawiak told her she would be "trespassing" if she refused to leave the stationhouse and could be arrested (Allegation A - Threat of Arrest, \$87(2)(g) Police Officer Plawiak then approached \$87(2)(6) and allegedly pushed her in her upper chest and left arm (Allegation B – Physical Force, § 87(2)(g) § 87(2)(b) took out her phone, and Police Officer Plawiak told her she could not film in the stationhouse (Allegation C - Interference with Recording, Police Officer Plawiak then allegedly pushed \$87(2)(b) again by "nudging" her shoulder (within Allegation B – Physical Force, § 87(2)(g) § 87(2)(b) exited the 75<sup>th</sup> Precinct's stationhouse into its parking lot, followed by Police Officer Plawiak as well as Lieutenant Joshua Bienvenue, Police Officer Joshua Ganshaw, and Sergeant Douglas Ayres of the 75<sup>th</sup> Precinct. After a brief conversation with Sergeant Ayres about the complaint with her tenants, left the stationhouse parking lot. § 87(2)(b) was not arrested or issued any summonses as a result of this incident.

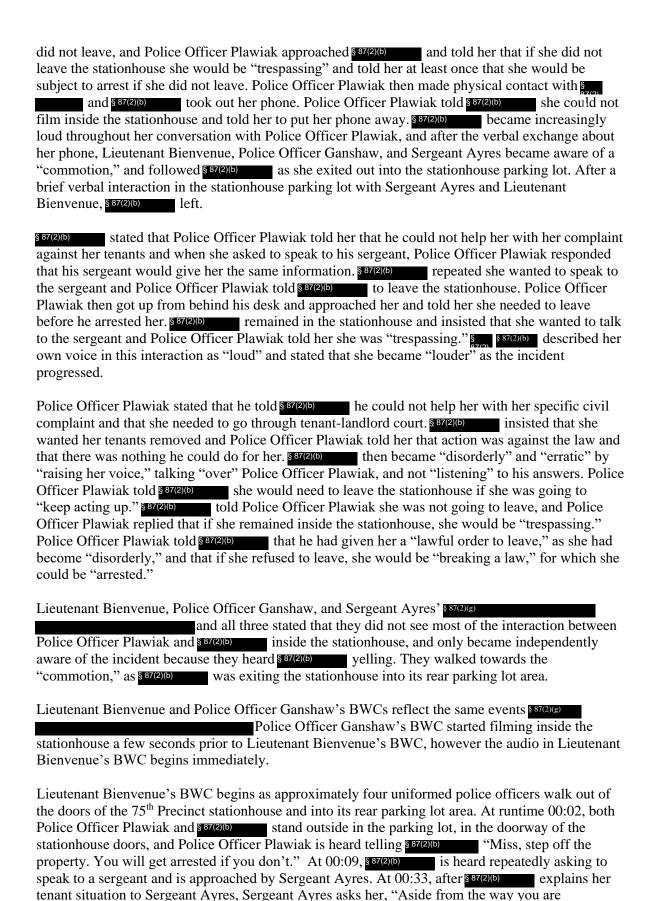
Footage of the 75<sup>th</sup> Precinct stationhouse's lobby and desk area were obtained and did not capture the incident. (The 75<sup>th</sup> Precinct front entrance area was under construction at the time of the incident and the footage obtained did not capture the back area of the stationhouse where the incident occurred) (**Board Review 02, 03, 04, and 05**). Body-worn camera (BWC) footage of sinteraction with officers in the 75<sup>th</sup> Precinct stationhouse's parking lot area was obtained from Lieutenant Bienvenue and Police Officer Ganshaw's BWCs and is attached in IAs #78 and #79 (**Board Reviews 06 and 07**) and summarized in IA #82 (**Board Review 08**). The investigation did not obtain any BWC footage that captured the interaction inside the 75<sup>th</sup> Precinct stationhouse between Police Officer Plowiak and [S7(2)(b)] However, the nature of the incident did not require the use of BWC as per the Patrol Guide.

## **Findings and Recommendations**

## Allegation (A) Abuse of Authority: Police Officer Kerry Plawiak threatened to arrest § 87(2)(b)

was interviewed at the CCRB on February 7<sup>th</sup>, 2020 (**Board Review 09**). Lieutenant Bienvenue was interviewed at the CCRB on August 27<sup>th</sup>, 2020 (**Board Review 10**). Police Officer Ganshaw was interviewed at the CCRB on August 30<sup>th</sup>, 2020 (**Board Review 11**). Police Officer Plawiak was interviewed at the CCRB on September 14<sup>th</sup>, 2020 (**Board Review 12**). Sergeant Ayres was interviewed at the CCRB on September 15<sup>th</sup>, 2020 (**Board Review 13**).

The following facts are undisputed: On January 1<sup>st</sup>, 2020, at approximately 1:15 p.m., \$87(2)(b) went to the 75<sup>th</sup> Precinct Stationhouse to make a complaint against her tenants and encountered Police Officer Plawiak behind a desk at the rear entrance of the stationhouse. Police Officer Plawiak told \$87(2)(b) he could not help her with her civil complaint. After a brief verbal exchange, Police Officer Plawiak told \$87(2)(b) repeatedly to leave the stationhouse.

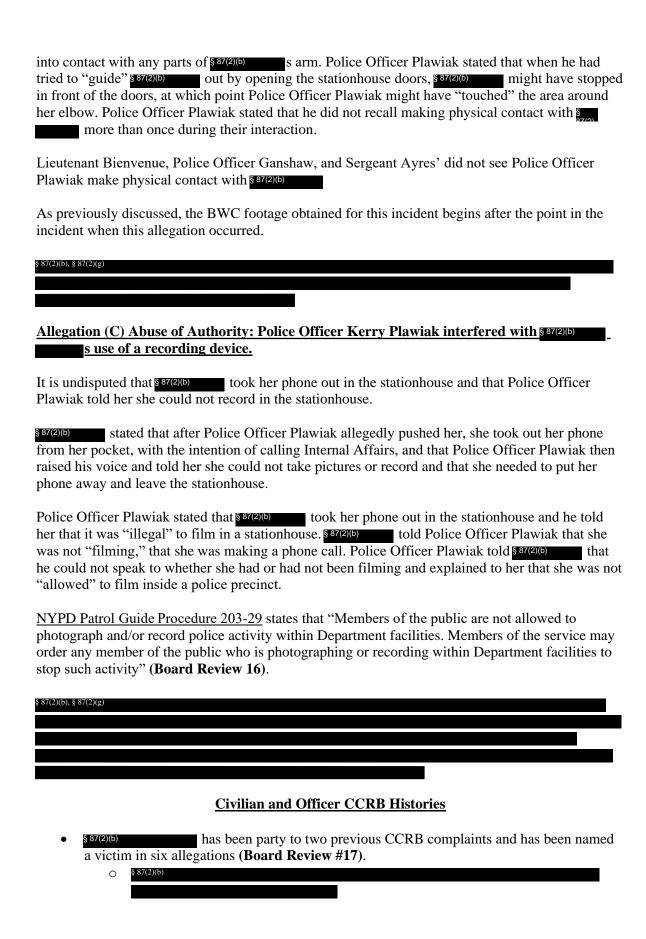


screaming at me, what can I do as a police officer?" Throughout Lieutenant Bienvenue's BWC, the volume of \$87(2)(b) so voice becomes increasingly elevated. At 00:49, \$87(2)(b) yells, "Enough! Enough! I haven't had any sleep. When I haven't had any sleep, I am fucking irrational. Okay? Send me back home and watch." After Lieutenant Bienvenue asks \$87(2)(b) if she would like to go to the hospital, \$87(2)(b) answers, "No, I fucking don't. I want them to stop the fucking noise," and then walks out of the stationhouse parking lot.

According to N.Y.S. Penal Law, Section 140.00, a person remains unlawfully in a premise when they defy a lawful order not to remain, personally communicated to them by the owner of such premises or other authorized person. N.Y.S. Penal Law, Section 140.05 adds that the violation of trespass occurs when one knowingly enters or remains unlawfully in or upon premises (Board Review 14).

In <u>People v. Reape</u>, 868 N.Y.S.2d 497 (2008), the courts discussed the trespass statute's applicability to an NYPD Precinct stationhouse. Though an individual has the license and privilege to remain on premises that are open to the public, they can be lawfully ordered to leave by an authorized person. The court states that the license to remain on municipal or state property that is generally open to the public can be regulated to prevent interference with the ordinary use of the property by other members of the public with an equal right of access (**Board Review 15**).

§ 87(2)(b), § 87(2)(g)
Allegation (B) Physical Force: Police Officer Kerry Plawiak pushed 887(2)(b)
§ 87(2)(b), § 87(2)(g)
stated that after Police Officer Plawiak had told her she could be arrested for "trespassing," Police Officer Plawiak had approached her and pushed her in her upper chest and left arm, which had caused her to "stumble" backwards. After Police Officer Plawiak pushed her, stold him, "Oh my god, I can't believe you just pushed me" and "Do not touch me." Police Officer Plawiak then pushed stold him in the stationhouse by "nudging" her shoulder. Stold was not bruised or injured as a result of Police Officer Plawiak's physical contact with her.
Police Officer Plawiak stated that he did not recall pushing \$87(2)(6)  refused to leave the stationhouse, he put his right arm outwards in order to try and "guide" her out. Police Officer Plawiak explained that he had been trying to close off any direction to secure to try and "guide" "except for out the door." Police Officer Plawiak did not recall if his right hand had come



0	§ 87(2)(b)								
subje		has been a member of servi implaints and three other all							
	<u>Mediat</u>	tion, Civil and Criminal H	<u>listories</u>						
<ul> <li>Tyshaieka 887(2)(6) rejected mediation.</li> <li>According to the New York City Office of the Comptroller, no Notice of Claim had been filed regarding this incident as of September 30<sup>th</sup>, 2020 (Board Review #18).</li> <li>According to the Office of Court Administration (OCA), 887(2)(6) has no history of convictions in New York City (Board Review #19).</li> </ul>									
Squad No.:	2								
Investigator:	Julia Pagnamenta Signature	Inv. Julia Pagnamenta Print Title & Name		k/2020 te					
Squad Leader	: <u>Alexander Opoku-Agy</u> Signature	yemang IM Alexander O Print Title &	Opoku-Agyemang 2 Name	10/15/2020 Date					
Reviewer:	Signature	Print Title & Name	Da	te					